

Notice of Allowability

Application No.

09/920,386

Examiner

Daniel W. Howell

Applicant(s)

EIPPERT, GREG

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3-20-07.
2. ☒ The allowed claim(s) is/are 1-10 and 13-19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Daniel W. Howell
Primary Examiner
Art Unit 3722

Art Unit: 3722

1. The previous examiner of record, Mark Henderson, has left the PTO. In the Appeal Briefs of 11/21/05 and 3/20/07, and in reference to the rejection of record dated 1-12-05, Applicant mentions the application of the Mayfield reference to claims 4 and 5, though the statement of rejection clearly states "Whaley in view of Rush." In Examiner Henderson's working folder for this application, he had placed an Examiner's Answer listing his Supervisor, Monica Carter, and another Supervisor, Greg Vidovich, as conferees, but Monica Carter states that such an appeal conference never happened. The OACS date for this unmailed Examiners Answer is 8-7-06. At any rate, in that Examiners Answer, Examiner Henderson wrote that the application of "Mayfield as modified by Whaley" against claims 4 and 5 was an error, and that claims 4 and 5 were intended to be rejected under "Whaley as modified by Rush."
2. The following is an examiner's statement of reasons for allowance: as stated in the rejection of record dated 1-12-05, Whaley lacks the color coded sheet having one or more rows which are completely/fully color shaded. Though not specifically addressed in the Appeal Brief, it is noted that page 3 of the 1-12-05 rejection of record stated that Whaley taught "color coded stickered" medication containers. The application of Whaley for the color coded container feature of present claims 1, 10, and 17 is **not correct**. As discussed *repeatedly* in the Whaley reference, the container label 94, 114, 118, is coded by shape. Whaley provides an extensive discussion of these shapes beginning at column 6, line 32, and extending through column 8, line 38. The shapes of Whaley have explicit meanings. A square shape indicates that the medication is to be taken four times per day. A triangular shape indicates that the medication is to be taken three times per day. An hourglass indicates that the medication is to be taken twice a day. A downward arrow indicates that the medication is taken once per day in the morning. An upward

Art Unit: 3722

arrow indicates that the medication is taken once per day in the evening. As discussed at column 10, lines 16-19 and 65+, this pictogram based system permits messages to be conveyed between people who don't speak the same language. Any attempt to change the indicator system of Whaley from an image/symbol base to a color coded base would lose the messages provided by the symbols, and would thus destroy the operation of the Whaley reference.

Turning now to the application of the Rush reference to Whaley, the rejection of 1-12-05 states that Rush shows individual row cells with colors, and then states that this would make it obvious for the purpose of "color coding the matrix" of Whaley. Rush simply does not teach such an extensive connection between his chart and bottles/containers. While Rush does show different colors for the purpose of making it visually easy to record how many quarts, pints, and half pints of individual drinks have been sold in a day, there simply is no correlation between the colors of the chart and the bottles of drinks. That is, the bottles don't even have a label which corresponds to the color on the chart, such that no color coding is taking place between the chart/sheet and bottle/container. There is no suggestion from Rush, or from any other reference of record, to provide Whaley with a color coded sheet with one or more color shaded rows and a color coded container.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Claims 1-10 and 13-19 are allowed.
4. Any inquiry concerning the content of this communication from the examiner should be directed to Daniel Howell, whose telephone number is 571-272-4478. The examiner's office

Art Unit: 3722

hours are typically about 10 am until 6:30 pm, Monday through Friday. The examiner's supervisor, Monica Carter, may be reached at 571-272-4475.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office actions directly into the Group at FAX number to 571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify Examiner Daniel Howell of Art Unit 3722 at the top of your cover sheet.

A handwritten signature in black ink, appearing to read "Howell", is positioned above the printed name.

Daniel W. Howell
Primary Examiner
Art Unit 3722